(1)

FILED

No. 99 204 AUG 2 - 1999

IN THE

OFFICE OF THE CLERK

Supreme Court of the United States

October Term, 1999

PETER MALLEY,

Petitioner,

-against-

JOHN F. KEENAN, U.S.D.J., SDNY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether it violates All Writs Act "agreeable to usages and principles of law" 28 U.S.C. § 1651(a) for Judge Keenan, SDNY in same order to dismiss civil rights complaint in its entirety and enjoin plaintiff from filing any further complaints in SDNY both based on rendering judgement for timeliness and *res judicata* on personal injury diversity cases causes of action frauds and defendant fraud from dismissal motion memorandum and writing "Court need not examine other arguments" which would include all three civil rights causes of action including *unopposed* equitable tolled *unopposed* sex discrimination cause of action for which SDNY rendered no judgement on merits for timeliness or *res judicata* under any of four 2nd Cir. *res judicata* criteria?

Whether it violates All Writs Act "agreeable to usages and principles of law" for Judge Keenan, SDNY in later order narrowing original injunction for SDNY and extending new narrowed injunction to all federal courts enjoining plaintiff from filing any further complaints in any federal court based on two personal injury diversity cases causes of action frauds and defendant fraud from dismissal motion memorandum for which three frauds original injunction issued without permission of Judge of each such Court although no judgement on merits for *unopposed* equitable tolling timeliness or its *unopposed* sex discrimination cause of action *res judicata* under any of four 2nd Cir. *res judicata* criteria supporting original injunction for SDNY or SDNY portion of new injunction for all federal courts and although no judgements on merits for any cause of action in any other federal courts supporting all other federal courts portion of new injunction for all federal courts?

Whether it is proper to infringe on filing 42 U.S.C. § 1983 civil rights complaint, pursuant to 28 U.S.C. § 1651 (a) injunction?

PARTIES

All parties to now unmooted portion of proceeding in United States Court of Appeals for Second Circuit were petitioner Peter Malley and respondent John F. Keenan, U.S.D.J., SDNY.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1999

No 98-

PETER MALLEY,

Petitioner,

v.

JOHN F. KEENAN, U.S.D.J., SDNY,

Respondent.

Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

Copy of (1) 2nd Cir. 5/13/99 summary denial of plaintiff's petition for writ of mandamus ordering Judge Keenan, U.S.D.J., SDNY to withdraw his 7/21/95 and 9/10/97 28 U.S.C. § 1651 (a) injunctions and now mooted other matter, (2) SDNY 7/21/95 OPINION AND ORDER by Judge Keenan dismissing 10/4/94 complaint and enjoining plaintiff in SDNY under 28 U.S.C. § 1651 (a), (3) EDNY 11/18/96 ORDER by Judge John J. Sterling dismissing 10/31/96 complaint, (4) 2nd Cir. 4/23/97 order denying

plaintiff's appeal of 7/21/95 injunction for SDNY and remanding for consideration of extending 7/21/95 injunction for SDNY to all federal courts, and (5) SDNY 9/10/97 MEMORANDUM OPINION and ORDER narrowing injunction for SDNY and extending new narrowed injunction to all federal courts.

JURISDICTION

(a) Injunction under 28 U.S.C. § 1651 (a) that plaintiff may not file any further complaints in SDNY without permission of Judge of SDNY ordered by Judge Keenan, SDNY 7/21/95 and entered 7/21/95.

(b) Sec. Cir. denial of appeal of 7/21/95 injunction for SDNY and remanding for consideration of extension to all federal courts ordered 4/23/97 and entered 4/25/97.

(c) New narrowed injunction for SDNY extending to all federal courts ordered by Judge Keenan, SDNY 9/10/97 and entered 9/15/97.

(d) Sec. Cir. denial of writ of mandamus to order Judge Keenan, SDNY to withdraw both injunctions and now mooted other matter ordered 5/13/99 by 2nd Cir. and entered 5/13/99.

(e) U.S. Ct. of Appeals decision conflicts with eight herein shown prior decisions of other U.S. Ct.s of Appeals on same important matters.

(f) U.S. Ct. of Appeals decision conflicts with one herein shown prior decision of itself on same important matters.

(g) Jurisdiction to review the judgement in question by certiorari is conferred by Title 28 U.S.C. § 1254 (1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. § 1983 civil rights case, 28 U.S.C. § 1651 (a) "agreeable to usages and principles of law" All Writs Act, and U.S. Supreme Ct. equitable tolling counting analogous state law statute of limitations not from instance of violation but from knowledge or reasonable basis of knowledge of civil rights violation.

STATEMENT OF THE CASE

Judge Keenan, SDNY in same order dismissed civil rights complaint and enjoined plaintiff from filing any further complaints in SDNY without permission of Judge of SDNY.

Sec. Cir. denied plaintiff's appeal of 28 U.S.C. § 1651 (a) injunction and remanded for consideration of extending injunction to all federal courts.

Judge Keenan, SDNY narrowed original injunction and extended new narrowed injunction to all federal courts.

Sec. Cir. denied plaintiff's petition for writ of mandamus to order Judge Keenan, SDNY to withdraw original and later narrowed injunctions and now mooted other matter.

REASONS FOR GRANTING THE WRIT

PART I

Original Injunction for SDNY by Judge Keenan, SDNY

1. Order of 7/21/95 dismissed complaint for 3/18/87 and 3/20/90 personal injury diversity cases causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum finding these frauds time-barred by N.Y.S. 3yr. analogous statute of limitations.

2. Order dismissed these three frauds initially claimed in dismissal motion memorandum but never by plaintiff in any complaint.

3. Court stated "Court need not examine other arguments" which would include all causes of action in civil rights complaint.

4. Complaint initially litigated *unopposed* 3rd cause of action *unopposed* EARLY JUNE '94 EQUITABLY TOLLED not found untimely.

5. Complaint initially litigated *unopposed* 3rd cause of action *unopposed* N.Y.C. Bd. of Ed. charges sex discrimination against males not found *res judicata* barred by any prior cause of action in any of four prior SDNY cases, including both before Judge Griesa, under any of four 2nd Cir. *res judicata* criteria in *Collard v. Village of Flower Hill.*

6. Complaint initially litigated *unopposed* 3rd cause of action instance of violation (12/21/85) long predates 3/18/87 and 3/20/90 personal injury diversity cases causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum.

7. Order found these three dismissal motion memorandum frauds "ignored Judge Griesa's warnings".

8. Order then enjoined plaintiff under 28 U.S.C. § 1651 (a) "All Writs Act" that he may not file any further complaints in SDNY without permission of Judge of SDNY.

9. Order enjoining violated "All Writs Act permits court to enjoin repetitious and vexatious litigation only after it has reached judgement on merits." *Cok v. Peter Kiewit Sons Co.* by its dismissal not finding *unopposed* 3rd cause of action repetitious or untimely and not finding any of plaintiff's litigations vexatious.

10. Injunction violated (1) "litigant was not given opportunity to oppose entry of so broad an order" *Cok v. Family Court of Rhode Island*; (2) "Plaintiff entitled to notice and opportunity to oppose such order before it was instituted." *Tripati v. Beauman*; and (3) "district court did not provide litigant with an opportunity to be heard on the matter" *Brow v. Farrelly* by Sun. 7/21/95 enjoining without notice to oppose this broad order before its Thur. 7/25/95 entry.

11. Injunction violated (1) "Injunction. . .was overly broad; consequently injunction would be modified to provide that owner was prevented from commencing additional actions related to same subject matter without first obtaining leave of the district court." *Safir v. U.S. Lines, Inc.*; (2) "If an injunction against future litigation under 28 U.S.C.A. § 1651 (a) were to be couched in overly broad terms, this could impermissably infringe on litigator's right to access the courts; thus, such an injunction should be narrowly drawn to fit specific vice encountered." *Castro v. U.S.*; and (3) "The District Court. . .did not narrowly tailor order to meet circumstances of case." *Brow v. Farrelly* by order that plaintiff may not file any further complaints in SDNY without permission of Judge of SDNY with order finding three

frauds from dismissal motion memorandum untimely, *res judicata* barred, and "ignored Judge Griesa's warnings" but not finding *unopposed* 3rd cause of action repetitious or any of plaintiff's litigations vexatious.

12. Injunction violated (1) "record was not sufficiently developed to show that so broad an injunction was warranted." *Cok v. Family Court of Rhode Island*; (2) "did not offer justification for its imposition of order" *Brow v. Farrelly*; and (3) "circumstances could not be so extraordinary as to warrant injunction" *Kondrat v. Byron* by order finding three frauds from dismissal motion memorandum untimely, *res judicata* barred, and "ignored Judge Griesa's warnings" but not finding *unopposed* 3rd cause or action repetitious or any of plaintiff's litigations vexatious.

PART II

Later Narrowed Injunction for SDNY Extended to All Federal Courts by Judge Keenan, SDNY

1. Judge Keenan, SDNY in 7/21/95 order dismissing complaint and originally enjoining wrote "Plaintiff's claim against the Board accrued against the Board on March 18, 1987 when Plaintiff was discharged. Plaintiff's claim against the Chancellor accrued on March 20, 1990 when Plaintiff's Section 251 waiver request was denied. Plaintiff filed the present Complaint on October 4, 1994 more than seven years after the Board dismissed Plaintiff from his teaching position, and more than four and a half years after the Chancellor denied Plaintiff's request for a waiver of Section 251. . .While the action is clearly time-barred, and the Court need not examine other arguments, the Court finds that the doctrine of *res judicata* justifies dismissal as well." would exclude all complaint causes of action including *unopposed* 3rd

cause of action *unopposed* equitable tolling *unopposed* Board charges sex discrimination cause of action.

2. Judge Keenan, SDNY therein rendered no judgement on merits for *unopposed* EARLY JUNE '94 EQUITABLY TOLLED timeliness or its *unopposed* Board charges sex discrimination against males cause of action *res judicata* by any prior cause of action in any of four prior SDNY cases, including both before Judge Griesa, under any of four 2nd Cir. *res judicata* criteria in *Collard v. Village of Flower Hill* but instead rendered judgement on 3/18/87 and 3/20/90 personal injury diversity cases causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum finding these three frauds untimely, *res judicata* barred, and "ignored Judge Griesa's warnings" without finding any of these frauds *res judicata* by any prior cause of action in any of four prior SDNY cases under any of four 2nd Cir. *res judicata* criteria in *Collard v. Village of Flower Hill*.

3. Consequently it follows from immediate two prior para.s that new narrowed injunction for all federal courts is that plaintiff prohibited from filing further complaints in any federal court based on his dismissal by the Board of Education and/or the denial of his application to have his teaching license reinstated without permission of judge of such court directly derived from 3/18/87 and 3/20/90, now both undated, personal injury diversity cases causes of action frauds and now unstated Chancellor as defendant fraud from dismissal motion memorandum before Judge Keenan, SDNY dismissing and originally enjoining for SDNY.

4. However, new narrowed injunction for all federal courts allows plaintiff to file in SDNY or EDNY courts of jurisdiction without permission of judge of either court EARLY JUNE '94 EQUITABLY TOLLED Board charges sex discrimination against males cause of action with 12/21/85 instance of violation

long predating 3/18/87 and 3/20/90 causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum, pursuant of "Except where fraud or want of jurisdiction is charged, the recitals of a judgement import absolute verity and a court called upon to determine its character upon a plea of *res judicata* looks only to the face of the judgement and the pleadings on which it is rendered." *Mattews v. Wolvin*, for (1) no final judgement on merits for timeliness or *res judicata* for 10/4/94 prior complaint before Judge Keenan, SDNY and (2) wrongful dismissal by Judge Keenan, SDNY based on frauds from dismissal motion memorandum.

5. Plaintiff filed 10/31/96 complaint in EDNY unincumbered by original injunction for SDNY and prior to 9/10/97 new narrowed injunction for all federal courts with only one 42 U.S.C. § 1983 cause of action, pursuant to *Mattews v. Wolvin*, for (1) no final judgement on merits by Judge Keenan, SDNY for *unopposed* EARLY JUNE '94 EQUITABLY TOLLED timeliness or its *unopposed* Board charges sex discrimination against males cause of action *res judicata* by any prior cause of action in any of four prior SDNY cases, including both before Judge Griesa, under any of four 2nd Cir. *res judicata* criteria in *Collard v. Village of Flower Hill* and (2) wrongful dismissal by Judge Keenan, SDNY based on 3/18/87 and 3/20/90 personal injury diversity cases causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum before Judge Keenan, SDNY; however, Judge Sterling, EDNY in his sua sponte dismissal of fee paid complaint rendered no judgement on merits for only 42 U.S.C. § 1983 cause of action before him but instead rendered judgement on paraphrasing fraud from dismissal motion memorandum before Judge Keenan, SDNY which Judge Sterling, EDNY possessed.

6. New narrowed injunction extended to all federal courts violated "All Writ Act permits court to enjoin repetitious and vexatious litigation only after it has reached judgement on

merits." *Cook v. Peter Kiewit Sons Co.* for (1) no final judgement on merits for *unopposed* EARLY JUNE '94 EQUITABLY TOLLED timeliness or its *unopposed* Board charges sex discrimination against males cause of action *res judicata* by Judge Keenan, SDNY when he ordered original injunction for SDNY; (2) no final judgement on merits for timeliness or *res judicata*, pursuant to *Mattews v. Wolvin*, for same and only casue of action before Judge Sterling, EDNY (See para. 5 above.); and (3) no final judgement on merits for timeliness or *res judicata* in either N.J. federal complaint shown withdrawn by 4/23/97 2nd Cir. order.

7. New narrowed injunction extended to all federal courts violated (1) "litigant was not given opportunity to oppose entry of so broad an order" *Cok v. Family Court of Rhode Island*; (2) "Plaintiff entitled to notice and opportunity to oppose such order before it was instituted." *Tripati v. Beauman*; and (3) "district court did not provide litigant with an opportunity to be heard on the matter" *Brow v. Farrelly* by (1) no notice or opportunity to oppose 9/10/97 order entered 9/15/97 that plaintiff was not to file any further complaints in any federal court based on 3/18/87 and 3/20/90, now undated, personal injury diversity cases causes of action frauds and now unstated Chancellor as defendant fraud from dismissal motion memorandum before Judge Keenan, SDNY dismissing and originally enjoining for SDNY (See this Part II para.s 1-3 above.) without permission of Judge of such court and (2) Judge Keenan, SDNY falsified that plaintiff had not submitted response papers to proposed extension of original injunction as shown by docket sheet p.5 item 32 Appendix F.

8. New narrowed injunction extended to all federal courts violated (1) "Injunction. . .was overly broad; consequently injunction would be modified to provide that owner was prevented from commencing additional actions related to same subject matter without first obtaining leave of the district court."

Safir v. U.S. Lines, Inc.; (2) "If an injunction against litigation under 28 U.S.C. § 1651 (a) were to be couched in overly broad terms, this could impermissably infringe on litigator's right to access the courts; thus, such an injunction should be narrowly drawn to fit specific vice encountered." *Castro v. U.S.*; and (3) "The District Court. . .did not narrowly tailor order to meet circumstances of case." *Brow v. Farrelly* by overly broad injunction that plaintiff was not to file any further complaints in any federal court based on 3/18/87 and 3/20/90, both now undated, personal injury diversity cases causes of action frauds and now unstated Chancellor as defendant fraud from dismissal motion memorandum before Judge Keenan, SDNY dismissing and originally enjoining for SDNY (See this Part II para.s 1-3 above.) without permission of judge of such court which should be narrowly drawn to fit specific vice encountered that Judge Keenan, SDNY in original injunction order not found *unopposed* equitable tolling untimely or its *unopposed* sex discrimination cause of action *res judicata* barred by any specific prior cause of action and not found any of plaintiff's litigations vexatious and no final judgement on merits for any cause of action in any other federal court.

9. New narrowed injunction extended to all federal courts violated (1) "record was not sufficiently developed to show that so broad an injunction was warranted." *Cok v. Family Court of Rhode Island*; (2) "did not offer justification for its imposition of order" *Brow v. Farrelly*; and (3) "circumstances could not be so extraordinary as to warrant injunction" *Kondrat v. Bryon* for ordering that plaintiff was not to file any further complaints in any federal court based on 3/18/87 and 3/20/90, now undated, personal injury diversity cases causes of action frauds and now unstated Chancellor as defendant fraud from dismissal memorandum before Judge Keenan, SDNY dismissing and original enjoining for SDNY (See this Part II para.s 1-3 above.) without permission of Judge of such court with Judge Keenan, SDNY in original injunction order not finding *unopposed*

equitable tolling untimely or its *unopposed* sex discrimination cause of action *res judicata* by any specific prior cause of action and not found any of plaintiff's litigations vexatious and also no final judgements on merits for any cause of action in any other federal court.

CONCLUSION

1. Sec. Cir. Judges Feinberg, Winter, and Parker 4/23/97 (Appendix C) affirmed original injunction for SDNY and remanded for consideration of extension to all federal courts based on appellees fraud "Appellees advise us that Malley had filed two other actions. . .in the District of New Jersey, although they were subsequently withdrawn." fraud because neither N.J. withdrawn action with final judgement on merits for timeliness or *res judicata*; therefore, not supporting injunction extension pursuant to "All Writs Act permits court to enjoin. . .litigation only after it has reached judgement on merits." *Cook v. Peter Kiewit Sons Co.*

2. Sec. Cir. also based 4/23/97 (Appendix C) on another fraud by appellees "They also inform us that Malley faced with the injunction in the instant case, has now filed yet another repetitious action, but this time in the Eastern District of New York." fraud for two following reasons.

3. *First*, plaintiff had right to file in EDNY court of jurisdiction unincumbered by original injunction for SDNY, pursuant to *Mattews v. Wolvin*, civil rights complaint only cause of action repeating initially litigated *unopposed* 3rd cause of action in immediate prior complaint before Judge Keenan, SDNY for (1) no final judgement on merits by Judge Keenan, SDNY for *unopposed* equitable tolling timeliness or its *unopposed* sex discrimination cause of action *res judicata* barred by any prior cause of action in any prior complaint under any of four 2nd Cir. *res judicata* criteria and (2) wrongful dismissal by Judge Keenan,

SDNY based on 3/18/87 and 3/20/90 causes of action frauds and Chancellor as defendant fraud from dismissal motion memorandum.

4. *Second*, this also fraud because Judge Sterling, EDNY 11/18/96 (Appendix D) sua sponte order for fee paid complaint rendered no judgement on merits, pursuant to *Mattews v. Wolvin*, for (1) no final judgement on merits by Judge Keenan, SDNY or (2) wrongful dismissal by Judge Keenan, SDNY based on three frauds from dismissal motion memorandum but instead rendered judgement on paraphrasing fraud from frauds in dismissal motion memorandum in prior case before Judge Keenan, SDNY which Judge Sterling, EDNY possessed not supporting injunction extension pursuant to "All Writs Act permits court to enjoin. . .litigation only after it has reached judgement on merits." *Cook v. Peter Kiewit Sons Co.*.

5. *Hard bottom line*: both injunctions illegal without final judgement on merits for *unopposed* 3rd cause of action before Judge Keenan, SDNY or same and only cause of action before Judge Sterling, EDNY.

6. *Hard bottom line*: original injunction for SDNY with no final judgement on merits for *unopposed* 3rd cause of action illegal; therefore, may not be extended to all federal courts.

Respectfully submitted,

PETER MALLEY
Petitioner Pro Se
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Appendix A - Opinion of the United States Court of Appeals, Second Cir., Decided May 13, 1999.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 99-3025

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the thirteenth day of May one thousand nine hundred and ninety-nine,

Present:

Hon. Thomas J. Meskill,
Hon. Fred I. Parker,
Hon. Sonia Sotomayor,
Circuit Judges.

In Re PETER J. MALLEY,

Petitioner.

A petition having been brought herein by petitioner *pro se* for a writ of mandamus, upon consideration thereof, it is ordered that said petition be and it hereby is denied.

May 13, 1999

FOR THE COURT
Karen Greve Milton, Acting Clerk

By: Lucille Carr

Filed May 13,1999
United States Court of Appeals
Second Circuit

Appendix B - Opinion of the United States District Court, S.D., New York dated September 10, 1997.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER J. MALLEY,

Plaintiff,

against

NEW YORK CITY BOARD OF EDUCATION; CITY OF NEW YORK,

Defendants.

94 Civ. 7186 (JFK)

JOHN F. KEENAN, United States District Judge:

By Opinion and Order dated July 21, 1995, the Court granted Defendants' Fed. R. Civ. P. 112 (b)(6) motion to dismiss Plaintiff's complaint in its entirety on statute of limitations and *res judicata* grounds. Noting that Plaintiff had already filed four previous actions in this Court based on the same claims and that Chief Judge Griesa had twice warned Plaintiff against further filings based on the same core allegations, the Court also ordered Plaintiff not to file any further complaints in this Court without first obtaining permission from a judge of this Court.

Malley appealed the injunction to the Second Circuit Court of Appeals. The Second Circuit affirmed the injunction by Order dated April 23,1997 and remanded the matter for this Court's consideration of an order extending the injunction to *all* federal courts. The Court then directed submissions from the parties addressing the proposed extension of the injunction. Only

Defendant submitted papers in response, urging the proposed extension of the injunction to all federal courts.

Based on Plaintiff's history of abusing the process of this and other courts by repeatedly filing actions based on the same allegations, *see Malley v. New York City Board of Educ.*, 94 Civ. 4557 (TPG) (S.D.N.Y. Aug. 5, 1994); *Malley v. Medical Bureau*, 94 Civ. 3051 (TPG) (S.D.N.Y. Apr. 26, 1994); *Malley v. New York City Board of Educ.*, 93 Civ. 2887 (CSH) (S.D.N.Y. Feb. 9, 1994); *Malley v. Fernandez*, 91 Civ. 5635 (PKL) (S.D.N.Y. Aug. 11,1992), *aff'd* No. 92-9035, slip op. (2d Cir. Apr. 8, 1993) (per curiam); *Malley v. N.Y.C. Board of Educ.*, 96 CV 5344 (SJ) (E.D.N.Y. Nov. 18, 1996); *Malley v. N.Y.C. Board of Educ.*, 93 Civ. 5613 (HAA) (D.N.J., filed Dec. 20, 1993); *Malley v. Medical Bureau*, 93 Civ. 5612 (HAA) (D.N.J., filed April 25, 1994), and Plaintiff not having opposed such relief, the Court hereby extends the injunction to all federal courts. Plaintiff is hereby prohibited from filing any further complaints in any federal court based on his dismissal by the Board of Education and/or denial of his application to have his teaching license reinstated without first obtaining leave of a judge of the court in which he seeks to file such complaint. It is further ordered that Plaintiff attach a copy of this Order to any pleading filed, or attempted to be filed, in a civil action in any federal court. Failure to comply with this Order may result in the summary dismissal of Plaintiff's lawsuit.

SO ORDERED

Dated: New York, New York
September 10, 1997

John F. Keenan
John F. Keenan
United States District Judge

Filed Sep 15, 1997
U.S. District Court
S.D. of N.Y.

Appendix C - Opinion of the United States Court of Appeals, Second Cir., Decided April 23, 1997.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

96-9013

PETER J. MALLEY,

Plaintiff-Appellant,

-v-

NEW YORK CITY BOARD OF EDUCATION; CITY OF NEW YORK,

Defendants-Appellees.

Argued April 14, 1997 — August Term 1996
Decided: April 23, 1997 — No. 1186

Before: FEINBERG, WINTER AND PARKER, *Circuit Judges*

Appeal from an order denying relief under Rule 60 (b), Fed. R. Civ. P., from a judgment in the United States District Court for the Southern District of New York (John F. Keenan, *Judge)* enjoining appellant from filing future complaints in the Southern District of New York without first obtaining permission from a judge of that court. We affirm the injunction concerning complaints filed in the Southern District of New York. Malley appears now to have begun to pursue his repetitious and frivolous actions against the same defendants in other districts, and we remand for consideration of an order extending the injunction to all federal courts.

PETER J. MALLEY, *pro se*
Clifton, New Jersey, *for Plaintiff-Appellant*

STUART D. SMITH, Assistant
Corporation Counsel, City of
New York, New York, New York,
for Defendants-Appellees

PER CURIAM

Peter Malley appeals from Judge Keenan's order denying relief under Rule 60(b), Fed. R. Civ. P., from an injunction prohibiting appellant from filing future complaints in the Southern District of New York without first obtaining permission from a judge of that court. Malley has filed repetitive actions concerning his discharge as a New York City school teacher and revocation of his teaching license. These actions have just as repetitively been dismissed on statute of limitations and *res judicata* grounds. Malley was warned after the third such action that fur her such complaints might result in sanctions like the injunction now under review. Undeterred, Malley filed a fourth such complaint that was dismissed with yet another warning. Malley then filed the instant matter, dismissed again for the usual reasons, but this time the district court imposed the injunction from which Malley now appeals.

Malley has amply demonstrated that neither the lack of success of his actions nor the warnings of the district court will cause him to cease his abuse of the judicial process. We therefore affirm the injunction as granted. *See In Re Martin-Trigona*, 737 F.2d 1254, 1261 (2d Cir. 1984) (injunction is appropriate where plaintiff "abuse[s] the process of the courts to harrass and annoy others with meritless, frivolous, vexatious or repetitive. . .proceedings" (internal quotation and citation marks omitted)).

Appellees advise us that Malley has filed two other actions of the same nature in the District of New Jersey, although they were subsequently withdrawn. They also inform us that Malley, faced with the injunction issued in the instant case, has now filed yet another repetitious action, but this time in the Eastern

District of New York. They ask us to broaden the injunction beyond the Southern District to all federal courts. We see no barrier to a broader injunction in light of the warnings previously issued to Malley and of his persistence in pursuing the same meritless claims wherever his papers are accepted by a clerk of court. *See id.* at 1262 (approving injunction restricting new actions in all federal courts). However, we believe that such an order should be considered and fashioned in the first instance by the district court. We therefore remand the request to broaden the injunction.

Affirmed in part and remanded in part.

Appendix D - Opinion of the United States District Court, E.D., New York dated November 18, 1996.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PETER J. MALLEY,

Plaintiff,

against

NEW YORK CITY BOARD OF EDUCATION; CITY OF NEW YORK,

Defendants.

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96 CV 5344

APPEARANCES:

PETER J. MALLEY
31 Maple Place
Clifton, New Jersey 07011
Plaintiff, Pro Se

JOHNSON, District Judge:

The plaintiff filed a complaint alleging employment discrimination. This same plaintiff has filed numerous suits in the Southern District of New York arising from the same set of facts. These suits have been repeatedly held to be without merit. The plaintiff now files a complaint in this District based on these same facts, and is clearly attempting to circumvent a Southern

District Order preventing him from filing without first obtaining permission from a Judge.

The issues arising from the facts set forth in this complaint have been fully adjudicated in the Southern District. This case is therefore barred by the doctrine of *res judicata,* and the plaintiff's complaint is hereby dismissed. SO ORDERED.

DATED: November 18, 1996
Brooklyn, New York

Sterling Johnson, Jr.
U.S.D.J.

Appendix E - Opinion of the United States District Court, S.D., New York dated July 21, 1995.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER J. MALLEY,

Plaintiff,

against

NEW YORK CITY BOARD OF EDUCATION; CITY OF NEW YORK,

Defendants.

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94 Civ. 7186 (JFK)

APPEARANCES:

For Plaintiff *Pro Se*
PETER J. MALLEY
130 Sylvan Avenue
Clifton, New Jersey 07011

For Defendants:
PAUL A. CROTTY
Corporation Counsel of the
City of New York
100 Church Street, Room 6D5
New York, NY 10007
Of Counsel: AMY P. BERG, ESQ.

JOHN F. KEENAN, United States District Judge:

Before the Court is the motion of Defendants, pursuant to Fed. R. Civ. P. 12 (b) (6), to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted. Defendants also move, pursuant to 28 U.S.C. § 1651, for the Court to order Plaintiff not to file future complaints in this Court without first obtaining leave of the Court to do so. For the reasons stated below, the Court grants Defendants' motions.

BACKGROUND

Plaintiff is a former mathematics teacher at Washington Irving High School in New York City. Defendant New York City Board of Education (the "Board") administers that school. In March 1987, the Board dismissed Plaintiff from his teaching position and revoked Plaintiff's New York City teaching license. Plaintiff twice requested that the Chancellor of the Board ("Chancellor") waive Section 251 of the New York Education Law so that Plaintiff could seek a new license to teach in the City's school system.[1] The Chancellor denied these requests.

Plaintiff appealed the Chancellor's decision to the Commissioner of the State Education Department ("Commissioner"). In November 1991, the Commissioner dismissed Plaintiff's appeal because it was both meritless and time-barred. Since then, Plaintiff has filed five separate complaints in this Court alleging that his dismissal and Section 251 are both unconstitutional. Plaintiff has also filed at least two complaints in the United States District Court for the District of New Jersey regarding the constitutionality of his dismissal. *See Malley v. N.Y.C. Board of*

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[1] Under Section 251, the Board of Examiners may not entertain an application for a license by a member of the teaching staff who has been dismissed by the Board of Education, except on the recommendation of the Superintendent of Schools.

Educ., et al., 93 Civ. 5613 (HAA) (D.N.J. filed Dec. 20, 1993); *Malley v. Medical Bureau, et al.*, 93 Civ. 5612 (HAA) (D.N.J. filed April 25, 1994).

Plaintiff brought his first action in this Court in 1991. That action named the Board, the City, and then Chancellor Joseph Fernandez as defendants. Plaintiff claimed, *inter alia*, that Section 251, as implemented, violated his Fourteenth Amendment right to equal protection of the laws because Section 251 treats dismissed New York City teachers differently than how other school systems' dismissed teachers are treated. Judge Leisure dismissed that action because it was time-barred and because it failed to state a claim upon which relief could be granted. *See Malley v. Fernandez, et al.* 91 Civ. 5635 (PKL) (S.D.N.Y. Aug 11, 1992), *aff'd* No. 92-9035, slip op. (2d Cir. Apr. 8, 1993) (per curiam).

Plaintiff's second complaint in this Court alleged, *inter alia*, that Section 251 discriminates on the basis of age and gender. Judge Haight dismissed Plaintiff's complaint with prejudice, finding that the complaint was barred by both the applicable statute of limitations and *res judicata*. *See Malley v. New York City Board of Educ., et al.*, 93 Civ. 2887 (CSH) (S.D.N.Y. Feb. 9, 1994).

Plaintiff's third complaint in this Court claimed, *inter alia*, that the Board had violated Plaintiff's constitutional right to equal protection of the laws by terminating his employment. Judge Griesa dismissed the complaint on the ground that it was barred by *res judicata*. Judge Griesa also warned Plaintiff that the filing of additional complaints against the same defendants or based upon the same allegations might result in an order barring Plaintiff from filing future complaints without first obtaining leave of the Court. *Malley v. Medical Bureau, et al.*, 94 Civ. 3051 (TPG) (S.D.N.Y. Apr. 26, 1994).

Nearly four weeks after filing his complaint in *Malley v. Medical Bureau*, Plaintiff filed his fourth action in this Court. That action alleged that his dismissal constituted a violation of his right to equal protection of the laws. *Malley v. New York City Board of Educ., et al.*, 94 Civ. 4557 (TPG) (S.D.N.Y. Aug. 5, 1994). Judge Griesa dismissed Plaintiff's action on the ground of *res judicata* and on the merits. The Judge reminded Plaintiff that the further filing of complaints based upon the same core allegations, or against the same defendants, might result in the Court not accepting future complaints from the Plaintiff without his first obtaining leave of the Court.

Despite the Court's warnings, Plaintiff filed the instant Complaint on October 4, 1994. Plaintiff, appearing *pro se*, once again claims that the Board's actions violate his Fourteenth Amendment right to equal protection of the laws. Plaintiff also repeats his claim that Section 251 of the New York Education Law discriminates against older males on the basis of sex and age. Finally, Plaintiff claims that the Chancellor violated Plaintiff's equal protection rights by applying Section 251 to his case. Plaintiff brings the instant action under 42 U.S.C. § 1983.

DISCUSSION

I. *Motion to Dismiss*

In deciding a motion to dismiss, it is necessary for the Court to view the complaint in the light most favorable to the plaintiff. *See Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974); *Yoder v. Orthomolecular Nutrition Inst., Inc.*, 751 F.2d 555, 562 (2d Cir. 1985). The Court must accept the factual allegations stated in the complaint as true. *See Cooper v. Pate*, 378 U.S. 546 (1964). A motion to dismiss for failure to state a claim may only be granted if it appears, beyond doubt, that the plaintiff can prove no facts in support of his claim that would entitle him to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

II. *Analysis*

Defendants move to dismiss Plaintiff's Complaint, pursuant to Fed. R. Civ. P. 12 (b) (6), on grounds that the applicable statute of limitations and the doctrine of *res judicata* bar Plaintiff's claims. The Court finds that Defendants' contentions are valid, and therefore dismisses Plaintiff's Complaint.

A. *Statute of Limitations*

Plaintiff brings his action under 42 U.S.C. § 1983. In New York, the limitations period to bring a lawsuit under 42 U.S.C. § 1983 is three years. *Owens v. Okure*, 488 U.S. 235, 245-50 (1989). Plaintiff's claim against the Board accrued on March 18, 1987 when Plaintiff was discharged. Plaintiff's claim against the Chancellor accrued on March 20, 1990 when Plaintiff's Section 251 waiver request was denied. Plaintiff filed the present Complaint on October 4, 1994, more than seven years after the Board dismissed Plaintiff from his teaching position, and more than four and a half years after the Chancellor denied Plaintiff's request for a waiver of Section 251. The present action is therefore time-barred. While this action is clearly time-barred, and the Court need not examine other arguments, the Court finds that the doctrine of *res judicata* justifies dismissal as well.

B. *Res Judicata*

Defendants additionally argue that the doctrine of *res judicata* bars this action. The purpose of the doctrine of *res judicata* is to ensure that once there has been a final judgment on the merits, the parties or their privies do not bring any further claims on the same cause of action. *See United States v. Mendoza*, 464 U.S. 154, 158 n. 3 (1984). The doctrine of *res judicata* bars Plaintiff from bringing the present action because this Court already has issued a final judgment on the merits concerning the issues that Plaintiff's Complaint raises. The respective orders of the

Honorable Peter K. Leisure, Honorable Charles S. Haight, Jr., and Honorable Thomas P. Griesa each constitute a final judgment on the merits for *res judicata* purposes. *See Malley v. Fernandez, et al.*, 91 Civ. 5635 (PKL) (S.D.N.Y. Aug. 11, 1992), *aff'd*, No. 92-9035, slip op. (2d Cir. Apr. 8, 1993) (per curiam); *Malley v. New York City Board of Educ., et al.*, 93 Civ. 2887 (CSH) (S.D.N.Y. Feb. 9, 1994); *Malley v. Medical Bureau, et al.*, No. 94 Civ. 3051 (TPG) (S.D.N.Y. Apr. 26, 1994).

Plaintiff alleges that the three-year statute of limitations does not bar the instant action because he did not discover that the Board had a policy that discriminated against older male teachers until mid-April of 1993. The doctrine of *res judicata* bars Plaintiff from relitigating the issue of whether the statute of limitations bars his claims because that issue already has been decided by this Court. On April 30, 1994, approximately two weeks after Plaintiff's alleged discovery of the Board's sex and age discrimination, Plaintiff filed a complaint in this Court. Judge Haight dismissed that complaint, and in the process, clearly rejected Plaintiff's claim that the Court should invoke the doctrine of equitable tolling to avoid the statute of limitations. *Malley v. New York City Board of Educ., et al.*, 93 Civ. 2887 (CSH) (S.D.N.Y. Feb. 9, 1994). *Res judicata* precludes Plaintiff from relitigating the timeliness of this lawsuit because he already had a full and fair opportunity to litigate this issue in the action before Judge Haight.

III. *Future Actions*

This Court has the power to issue all writs necessary or appropriate in aid of this Court's jurisdiction and agreeable to the usages and principles of law. *See* 28 U.S.C. § 1651. In *Malley v. Medical Bureau*, Judge Griesa warned Plaintiff that the filing of additional complaints based upon the same allegations or against the same defendants might result in the issuance of an

order barring the acceptance of any future complaints without Plaintiff's first obtaining leave of the Court. Plaintiff's prior actions in this Court involved, *inter alia*, the same parties and issues as the present action involves. Because Plaintiff has ignored Judge Griesa's warnings, this Court orders that Plaintiff may not file any more complaints in this Court without first obtaining the permission of a Judge of this Court.

CONCLUSION

For the reasons stated above, the Court grants Defendants' motion to dismiss Plaintiff's Complaint. The Court also orders that Plaintiff may not file future actions without first obtaining the permission of a Judge of this Court to do so. The Court orders this case closed and directs the Clerk of the Court to remove the case from the Court's active docket.

SO ORDERED.

Dated: New York, New York
July 21, 1995

John F. Keenan
John F. Keenan
United States District Judge

Appendix F - SDNY docket sheet p.5 as of 9/18/97 showing plaintiff filed opposition papers to injunction extension to all federal courts.

Proceedings include all events.
1:94cv7186 *Malley v. New York City Board, et al* CLOSED

4/30/97	27	ORDER , for leave to file defts memo of law re Second Circuit Court of Appeals decision of 4/23/97 by 6/2/97; plntf may submit papers in opposition by 6/30/97 (signed by Judge John F. Keenan); copies mailed (cd)
6/2/97	28	DECLARATION of Georgia Pestana by New York City Board, Corp. Counsel N.Y.C., and City of New York in support of an extension of the injunction which prohibits plaintiff from filing any new actions or motions in the District Court for the SDNY. (kw) [Entry date 06/04/97]
6/2/97	29	MEMORANDUM by New York City Board , Corp. Counsel N.Y.C., City of New York in support of extending the injunction prohibiting plaintiff from filing further lawsuits. (kw) [Entry date 06/04/97]
6/4/97	30	CERTIFICATE OF SERVICE by New York City Board, Corp. Counsel N.Y.C., City of New York of Memorandum of Law as to plaintiff *pro se*, by mail on 6/2/97. (ae) [Entry date 06/09/97]

6/12/97	31	MANDATE OF USCA (certified copy) Re: [26-1] appeal by Peter J. Malley. It is ordered that the petition for a writ of mandamus is denied without prejudice to renewal if, within 60 days, the district court does not act on the motion seeking leave to file a complaint. (97-3043) George Lange, III, Clerk, USCA. (as) [Entry date 06/16/97]
6/23/97	32	OPPOSITION by Peter J. Malley to re: injunction extension to all Federal CT.s, pursuant to 4/29/97 order of this Court. (ae) [Entry date 6/24/97]
8/21/97	33	MANDATE OF USCA (certified copy) Re: It is now hereby ordered, adjudged and decreed that the order be and it hereby is affirmed in part and remanded in part to the district court. (96-9013) George Lange, III, Clerk, USCA, (as) [Entry date 08/26/97]
9/15/97	34	MEMORANDUM OPINION AND ORDER #79271, plaintiff is prohibited from filing any further complaints in any federal court based on his dismissal by the Board of Education and/or the denial of his application to have his teaching license reinstated without first obtaining leave of a judge of the court in which he seeks to file such complaint. It is further ordered that plaintiff attach a copy of this Order to any pleading filed, or attempted to be filed, in a civil action in any federal court. Failure to comply with this Order may result in the summary dismissal of plaintiff's lawsuit.

(Signed by Judge John F. Keenan) Copies mailed. (djc)

Appendix G - Constitution and Statutory Provisions.

42 U.S.C. § 1983 civil rights

28 U.S.C. § 1651 (a) All Writs Act "agreeable to usages and principles of law"